

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Marvin Gerber,

Plaintiff,

vs.

Civil Action No. 2:19-cv-13726
Hon. Victoria Roberts

Henry Herskovitz, Gloria Harb, Tom Saffold,
Rudy List, Chris Mark, Deir Yassin Remembered, Inc.,
Jewish Witnesses for Peace and Friends, the City of Ann Arbor,
Ann Arbor Mayor Christopher Taylor, in his official
and individual capacities, Ann Arbor Community Services
Administrator Derek Delacourt, in his official and individual
capacities, Ann Arbor City Attorney Stephen Postema, in his
official and individual capacities, and Senior Assistant
City Attorney Kristen Larcom, in her official and
individual capacities,

Defendants, Jointly and Severally.

Marc M. Susselman (P29481)
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Attorney for Plaintiff

Cynthia Heenan (P53664)
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**PLAINTIFF'S RESPONE TO *EX PARTE* MOTION BY DEFENDANTS
HERSKOVITZ, HARB, SAFFOLD, LIST AND MARK TO EXTEND THEIR
DEADLINE TO RESPOND TO COMPLAINT**

NOW COMES Marvin Gerber, by and through his attorney Marc M. Susselman, and

responding to the Protester Defendants' *ex parte* motion to extend the deadline for responding to the Complaint, states as follows:

1. Admits.
2. Admits.
3. The allegation is incorrect. The Complaint contains 8 counts pled solely against the Protester Defendants (Counts I, II, V, VII, XIV, XVII, XVIII, and XIX.) It contains an equal number of counts pled solely against the City Defendants (Counts IV, IX, X, XI, XII, XIII, XV, and XX). Four conspiracy counts are pled against both the Protester Defendants and the City Defendants (Counts III, VI, VIII and XVI).
4. Admits.
5. Neither admits nor denies for lack of information sufficient to determine the truth of the assertion.
6. No contest.
7. Admits.
8. Admits and states further that Plaintiff's counsel required, as a condition for granting the City Defendants an additional 14 days to respond to the Complaint, that the City Defendants stipulate to granting Plaintiff 14 days in addition to the 21 days provided under the court rules to respond to a motion filed by the City Defendants should they respond by motion, rather than responding by filing an Answer to the Complaint. The City Defendants agreed.
9. Denied for the reason that the allegation is untrue. Ms. Heenan requested that Plaintiff's counsel agree to grant the Protester Defendants an additional 60 days to respond to the Complaint, not 42 days. Plaintiff's counsel responded that a request for 60 days was unprecedented and he would not agree. He offered the same extension that he had agreed to

provide the City Defendants, with a reciprocal stipulation by Ms. Heenan that she would grant Plaintiff's counsel an additional 14 days should she file a motion under F.R.C.P. 12. Ms. Heenan rejected this offer.

10. Admits, with the clarification that Ms. Heenan did not request 42 days, but rather 60 days.

11. Admits.

12. Denied, for the reason that the allegation is untrue. Every Saturday that the Protester Defendants continue to engage in their protesting activity, in which they subject Plaintiff, and other members of 'Beth Israel Synagogue, to the insulting and virulently Antisemitic messages on many of their signs (*see* Exhibits 3 and 4, attached to the Complaint) causes Plaintiff extreme emotional distress, to the point that he does not want to attend Sabbath services at the house of worship of his choice and is forced to attend Sabbath services at another Jewish house of worship, which is not his first and preferred choice of where to worship. This emotional distress, and the Hobson's choice it puts Plaintiff to making every additional Saturday that he is forced to make that choice, is prejudicial to his 1st Amendment right of the free exercise of his religion, a right that is being aided and abetted by the City Defendants' state action in failing to enforce the provisions of the Ann Arbor City Code which unambiguously prohibits the Protester Defendants' conduct, as outlined in the Complaint.

WHEREFORE, Plaintiff requests that the *ex parte* motion be denied, or, if granted, that the Court grant Plaintiff an equal number of days extension to respond to the Protester Defendants' Rule 12 motion, over and above the 21 days allowed under the court rules.

Respectfully submitted,

By: /s/ Marc M. Susselman
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Dated: January 3, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
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Marvin Gerber,

Plaintiff,

vs.

Civil Action No.: 2:19-CV-13276
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Rudy List, Chris Mark, Deir Yassin Remembered, Inc.,
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BRIEF IN SUPPORT OF
PLAINTIFF'S RESPONSE TO EX PARTE MOTION BY DEFENDANTS
HERSKOVITZ, HARB, SAFFOLD, LIST AND MARK TO EXTEND THEIR
DEADLINE TO RESPOND TO COMPLAINT

Plaintiff acknowledges and does not contest that the Court has the authority to grant the

Protester Defendants whatever additional time the Court deems appropriate to allow the Protester Defendants to answer the Complaint or otherwise plead. Plaintiff writes only to clarify a number of erroneous assertions contained in the Protester Defendants' motion and brief.

Plaintiff admits that the Complaint is lengthy, with numerous counts and numerous case citations. The Protester Defendants have, however, retained a team of three experienced attorneys (attorney John Shea has also entered an appearance on behalf of the Protester Defendants) who, among them, should not require 42 days over and above the 21 days provided under the court rules to answer a complaint, or otherwise plead. That total amount of time would constitute 63 days, over two months to prepare and brief a motion by three experienced attorneys. An appropriate division of labor among the three attorneys should allow them to expedite the preparation of their response.

The assertion that additional time is not of essence, since the Protester Defendants have been engaging in their Antisemitic behavior in front of a Jewish house of worship every Saturday morning for 16 years is specious. Every additional day that this conduct continues to occur causes Plaintiff extreme emotional distress, emotional distress that cannot be flippantly dismissed as tolerable because it has already been occurring for numerous years.

Plaintiff accordingly requests that the Court limit the extension of time to 21 additional days, so that the case can proceed as expeditiously as possible in order to provide Plaintiff with the relief he seeks in the Complaint. Whatever additional number of days the Court grants to the Protester Defendants, Plaintiff requests that the Court also grant him the same number of additional days to respond to the Protester Defendants' motion and brief.

Respectfully submitted,

By: /s/ Marc M. Susselman
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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2010, I electronically filed Plaintiff's Response to Defendants' Ex Part Motion to Extend Deadline to Respond to Complaint, along with the accompanying Brief and this Certificate of Service, with the Clerk of the Court of the Eastern District of Michigan, using the ECF system, which will send notification of such filing to the following registered participants of the ECF system as listed on the Court's Notice of Electronic Filing:

All counsel of record via the ECT system

/s/ Marc M. Susselman
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